IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 104 OF 1997
IN
WRIT PETITION NO. 1954 OF 1997

The Solapur Co-operative Distillery Limited ...Appellants
(Orig.Petitioners)

V/s.

State of Maharashtra & Anr. ...Respondents
(Orig.Respondents)

Mr.D.B. Savant for the Appellants.
Mr.R.M. Patne, AGP for the State.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATED : NOVEMBER 28, 2007

P.C. :-

1. By this appeal, the petitioners challenge the order passed by the learned Single Judge dated 24th April, 1997 in Writ Petition No.1954/97. By this order, the learned Single Judge dismissed the writ petition filed by the petitioners. The petitioners had filed the writ petition challenging the order passed by the Commissioner of State Excise dated 27th March, 1997. It appears that the appellants had applied for renewal of licence for manufacturing liquor. It appears that a

large amount was to be recovered from the appellants. The State Government by order dated 21st June, 1993 renewed the manufacturing licence of the appellants subject to certain conditions. One of the conditions was that the petitioners will pay the amount of arrears by 10 equal annual instalments. As a condition for grant of instalment for payment of the arrears by order dated 27th March, 1997, a condition was imposed that on the amount of arrears, the appellants will have to pay interest.

2. According to the appellants, there is no provision in the Bombay Prohibition Act for charging interest on the amount of arrears before 1998. He also relies on a judgment of the Supreme Court in the case of **Gupta Modern Breweries V/s. State of J&K and Others, reported in (2007) 6 SCC 317.**

3. Perusal of the record shows that for getting renewal of the licence, it was for the appellants to deposit the amount of arrears. The State Government in exercise of its jurisdiction renewed the licence and

permitted the payment of the amount of arrears by instalments and as a condition for the exercise of the power of the State Government to grant instalment, the requirement of paying interest was incorporated. The power of the State Government to permit the petitioners to pay the amount of arrears by instalments has been exercised by the Government subject to the condition that the appellants shall pay interest on the amount. The amount which was in arrears was the amount of tax. The State Government was deprived of that amount for a considerably long period. The State Government permitted the appellants to pay the amount by instalments but to compensate the loss that the State Government suffered because of grant of instalments, the State Government has imposed condition for payment of interest. The condition for payment of interest has not been imposed under the provisions of Bombay Prohibition Act. The condition of payment of interest has been imposed as a condition for exercise of powers for allowing the appellants to pay the amount of arrears by instalments.

4. In our opinion, the order of the State Government imposing condition for payment of interest for grant of instalment cannot be said to be unjust. In fact, in our opinion, the order does justice between the parties. Therefore, in our opinion, as exercise of power under extraordinary jurisdiction of this court under the Constitution is in the discretion of this Court, the learned Single Judge has rightly declined to entertain the petition.

5. Appeal is disposed of. In view of disposal of the appeal, the connected Civil Application does not survive and the same is also disposed of.

(D.K. DESHMUKH, J.)

(V.M. KANADE, J.)